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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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**MICROBOT MEDICAL, INC.,**

**Plaintiffs,**

**19 Civil 3782 (GBD)(RWL)**

**v.**

**ALLIANCE INVESTMENT MANAGEMENT  
And JOSEPH MONA,**

**Defendants.**

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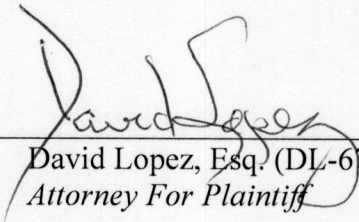
**PLAINTIFF'S MOTION FOR DEFERRAL OF CONSIDERATION OR DENIAL  
OF DEFENDANT ALLIANCE INVESTMENT MANAGEMENT LTD'S  
MOTION FOR SUMMARY JUDGMENT OF DISMISSAL AS TO IT AND FOR THE  
TAKING OF SPECIFIC DISCOVERY UNDER RULE 56(d), F.R.C.P.**

PLEASE TAKE NOTICE that upon the accompanying Affirmation and Memorandum In Support Of Plaintiff's Motion For Deferral Of Consideration Or Denial of Defendant Alliance Investment Management Ltd's Motion For Summary Judgment of Dismissal As To It And For The Taking Of Specific Discovery Under Rule 56(b), F.R.C.P. and upon all prior proceedings, pleadings and filings in this Action, Plaintiff will move this court at the United State Courthouse for the Southern District of New York, 500 Pearl Street, New York, New York 10007, before the Hon. George B. Daniels, United States District Judge, at a time of the court's choosing for an



Order pursuant to Rule 56(b), F.R.C.P. and for such other and different relief as this court may deem just and proper.

Dated: Southampton, New York  
January 6, 2020



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David Lopez, Esq. (DL-6779)  
*Attorney For Plaintiff*



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

MICROBOT MEDICAL INC.

Plaintiff,

v.

ALLIANCE INVESTMENT  
MANAGEMENT LTD. AND  
JOSEPH MONA,

Defendants.

19-CV-3782 (GBD)

No. \_\_\_\_\_

**AFFIRMATION IN SUPPORT OF PLAINTIFF'S MOTION  
UNDER F.R.C.P. RULE 56(d) FOR  
DEFERRAL OF CONSIDERATION OR DENIAL OF DEFENDANT  
ALLIANCE INVESTMENT MANAGEMENT LTD'S MOTION FOR  
SUMMARY JUDGMENT OF DISMISSAL AS TO IT AND FOR THE TAKING OF  
SPECIFIC DISCOVERY**

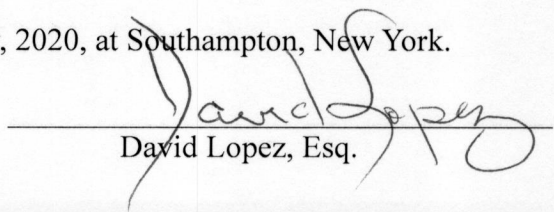
**DAVID LOPEZ, ESQ.**, a member of the bar of this court and one of Plaintiff's attorneys, affirms the truth of the following upon his oath as an attorney, intending the penalties of perjury to apply.

1. The Motion For Summary Judgment of Dismissal brought by Defendant Alliance Investment Management Ltd. on its own behalf is premature and brought prior to allowing the Plaintiff time to complete pending discovery.
2. This is the second time that Defendant Alliance has jumped the gun with a motion of summary judgment. The first such motion was brought on October 28, 2019 (Docket Entry # 38) while substantial discovery requests were outstanding and without provision for compliance with them.



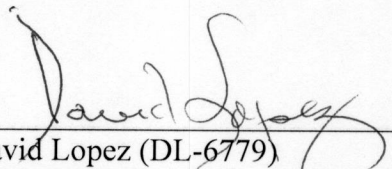
3. The Defendant, Alliance, simultaneously moved to stay all discovery to allow its motion for summary judgment to be decided. That motion was denied and Defendant, Alliance was directed to make specific discovery requested by Plaintiff with leave granted to Plaintiff for a second amended complaint (Docket Entry # 41).
4. Plaintiff filed a second amended complaint (Docket Entry # 44) on November 18, 2019.
5. Without answering the second amended complaint or allowing time for the Plaintiff to become informed of Defendant Alliance's putative defenses, admissions and denials, Alliance moved a second time for summary judgment (Docket # 45) on December 3, 2019. That is the motion now before the court.
6. Plaintiff, on December 7 2019, moved Magistrate Judge Hon. Robert W. Lehrburger, to compel specific factual declarations (Docket # 50) necessary to address the Defendant's motion for summary judgment.
7. Alliance opposed that motion on December 11, 2019 (Docket # 52).
8. On December 12, 2109, Magistrate Judge Lehrburger stayed all discovery pending a determination of Alliance's motion for summary judgment (Docket # 53).
9. Plaintiff is now moving to have Your Honor allow the discovery thus stayed to proceed in order to enable Plaintiff to oppose Alliance's motion for summary judgment and is moving pursuant to F.R.C.P. Rule 56(d)(1) to defer consideration of the motion or to deny it to allow time to complete the discovery described at paragraph 6. *supra* (Docket # 50).

I affirm the foregoing this 6<sup>th</sup> day of January, 2020, at Southampton, New York.

  
David Lopez, Esq.

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

MICROBOT MEDICAL INC.

Plaintiff,

v.

ALLIANCE INVESTMENT  
MANAGEMENT LTD. AND  
JOSEPH MONA,

Defendants.

19-CV-3782 (GBD)

No. \_\_\_\_\_

**MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION  
UNDER F.R.C.P. RULE 56(d) FOR DEFERRAL OF  
CONSIDERATION OR DENIAL OF DEFENDANT  
ALLIANCE INVESTMENT MANAGEMENT LTD'S MOTION FOR  
SUMMARY JUDGMENT OF DISMISSAL AS TO IT AND FOR THE TAKING OF  
SPECIFIC DISCOVERY**

**OVERVIEW**

**ALLIANCE INVESTMENT MANAGEMENT LTD.**, one of the defendants herein, moves for the second time for summary judgment of dismissal as to it prior to allowing pending necessary discovery being pursued by the plaintiff to yield factual matter necessary to plaintiff's opposition to or acquiescence in the requested discharge.

This is a shareholder suit brought under Section 16(b) of the Securities Exchange Act of 1934, as amended, seeking recovery of putative short-swing profits due to the plaintiff. Alliance Investment Management Ltd. reported itself to the Securities & Exchange Commission as being a beneficial owner of more than 10% of plaintiff's common stock outstanding and thus a statutory "insider" which, while in that status, purchased and sold shares of plaintiff within periods of less than six months, the sales at higher prices than the purchases, thereby generating recoverable profits.



Months after this suit had been filed Alliance, through hearsay declarations of its counsel, argued that the filings with the SEC were erroneous, that the reported transactions were made in an agency capacity as a securities broker-dealer for the benefit of a client and that Alliance realized no personal pecuniary benefit. Plaintiff has been seeking since September, or earlier, to verify the accuracy of these claims through entry onto the record of admissible evidence including trading records and explanatory affidavits. The exercise has not yet been successful.

If the court or any member of the general public were to consult the SEC's EDGAR filing system online today it or they would find Form 3 and Form 4 reports evidencing insider status and short-swing trading by Alliance as described in the complaint.

The Exhibits appended to Alliance's motion for summary judgment provide a partial evidentiary basis for implicating a client of Alliance's as having transactions that mimic the reported transactions of the complaint but in response to Plaintiff's request for declarations under oath eliminating the possibility of duplicative transactions for the benefit of Alliance or of any other client whose account is managed by Alliance and in which Alliance might share an opportunity to profit, Alliance has steadfastly refused to cooperate in putting the matter to rest. It prefers to bring successive motions for summary judgment knowing that there remains open one or more unsettled issues of material fact.

Plaintiff moves under F.R.C.P. for answers to its outstanding requests as described in Docket Entry # 50 and for deferral of consideration and grant or denial of defendant Alliance Investment Management Ltd's Motion for Summary Judgment of Dismissal as to it.

**ARGUMENT**

There are disputed issues of material fact extant and the subject of pending discovery requests that preclude the availability of Rule 56, F.R.C.P., to grant summary judgment of dismissal to Alliance prior to their resolution.

The document appearing at Docket Entry # 52, Exhibit 1, provides a detailed account of the deficiencies in the record that prevent Plaintiff from consenting to dismissal and provide a form of affidavit which, if utilized by Alliance without unconsented alterations, might well enable Plaintiff to agree to dismissal.

The status of the case, of Alliance's Rule 56 motion and the avenue for deciding whether Alliance remains or exits the case are really that simple.

Dated: Southampton, New York  
January 6, 2010

*s/ Miriam Tauber*

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